IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MS JUSTICE G.ROHINI**

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**WRIT PETITION NO : 14732 of 2004**

Between:

Peram Venkata Ratnamma, D/o. Venkataiah,
R/o. Ramasamudram Village, Tripuranthakam Mandal, Prakasam District.

..... PETITIONER

AND

1 The Revenue Divisional Officer, Markapur, Prakasam District.
2 The Mandal Revenue Officer, Tripuranthakam Mandal, Prakasam District.
3 Desireddy Kotasubbaiah S/o. Bala Kotaiah
R/o. 3-97, Ramasamudram, Tripuranthakam Mandal, Prakasam District.
(R-3 is impleaded as per C.O. Dt. 2.9.2004 in WPMP.20399 of 2004.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus, or any other appropriate writ, order or direction, declaring the proceedings bearing No. RCH/1130/2004, dt. 31-8-2004 of the 1st respondent suspending the authorization of the petitioners illegal, arbitrary, unjust and against to the principles of natural justice and consequently set aside the same.

**Counsel for the Petitioner: SMT.K.ARUNA**

**Counsel for the Respondent Nos.1 and 2: GP FOR CIVIL SUPPLIES**

**Counsel for the Respondent No.3: MR.T.S.RAYALU**

The Court at the admission stage made the following:

**ORDER:**

Petitioner is an authorised dealer of the Fair Price Shop of Ramasamudram village, Tripuranthakam Mandal, Prakasam District. It appears that on 09.07.2004 the authorisation of the petitioner was suspended by the first respondent - Revenue Divisional Officer basing on the report of the Mandal Revenue Officer, Tripuranthakam that the petitioner was indulging in certain irregularities in distribution of the commodities. Challenging the said order, the petitioner filed W.P.No.12456 of 2004. The said writ petition was disposed of by this Court by order dated 19.07.2004 holding that the order of suspension by way of substantive punishment, having been passed without any notice and enquiry is not sustainable. Accordingly, the order dated 09.07.2004 was set aside with an observation that the first respondent is not precluded from taking such appropriate action against the petitioner as may be open to him in accordance with law after affording the petitioner an adequate opportunity of being heard. Thereafter, the petitioner was served with the impugned proceedings dated 31.07.2004, under which the authorisation of the petitioner has been suspended and the third respondent herein has been appointed as a temporary dealer. The said order is under challenge in this writ petition.

It is to be noted that in the impugned order, it is stated that a show-cause notice dated 16-07-2004 was issued and the same was served on the petitioner by the Mandal Revenue Inspector, however subsequently the petitioner forcibly took away the acknowledged

copy of notice and also created nuisance when the Mandal Revenue Inspector tried to serve another copy of notice, and refused to receive the same and therefore the notice was affixed to the Fair Price Shop by way of substituted service. However, the petitioner denied all the said allegations and stated that in spite of the orders of this Court, no show-cause notice was served on the petitioner and therefore the impugned order of suspension of the authorisation is arbitrary and illegal.

In the counter-affidavit filed by the 1st respondent – Revenue Divisional Officer, Markapur, the contents of the impugned order dated 31-07-2004 have been reiterated and it is stated that though the show-cause notice was served through substituted service, the petitioner failed to give her explanation and therefore the impugned order has been rightly passed keeping in view several irregularities committed by the petitioner in distribution of the commodities.

The third respondent – temporary dealer filed a separate counter-affidavit stating that the writ petitioner is not residing in the village for the past nine years and that the shop is being run by some other person who was selling the commodities at higher prices. It is also stated that the petitioner started visiting the village only after receiving the order of suspension dated 09-07-2004 and that the show-cause notice was also served on her by substituted service and thereafter the impugned order has been rightly passed and therefore the same does not warrant any interference.

I have heard the learned Counsel for both the parties and perused the material on record.

A perusal of the impugned order dated 31-07-2004 shows that it is a final order by way of substantive punishment. As a matter of fact, even the period of suspension has not been specified. Before passing such an order, the affected party shall be afforded an opportunity to rebut the allegations, in conformity with the fundamental principles of natural justice. It is true that the 1st respondent states that such a notice was issued, but the petitioner

refused to receive the same, which fact has been denied by the petitioner.

Be that as it may, the question whether the notice was served on the petitioner or not being a disputed question of fact, cannot be investigated and decided by this Court. However, the fact remains that the impugned order was passed in the absence of any explanation by the petitioner. In the circumstances, I am of the view that the ends of justice would be met if one more opportunity is afforded to the petitioner to submit her explanation. To avoid any further controversy, a copy of the show-cause notice dated 16-07-2004 has been served on the learned Counsel for the petitioner by the learned Government Pleader for Civil Supplies in the open Court which shall be deemed to be a valid service on the petitioner.

Accordingly, the impugned order is set aside and the writ petition is disposed of granting leave and liberty to the petitioner to submit her explanation to the show-cause notice within a period of two weeks from today, in which event, the Revenue Divisional Officer shall consider the same and pass appropriate orders after conducting due enquiry in accordance with law. No costs.

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07.10.2004

Note: CC in two days

(b/o)

VGB

To

1 The Revenue Divisional Officer, Markapur, Prakasam District.
2 The Mandal Revenue Officer, Tripuranthakam Mandal, Prakasam District.

3 2CCs to the Government Pleader for Civil Supplies, High Court

Buildings, Hyderabad (OUT).

4 2CD copies